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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>FRANK ALEO,</p> <p>Petitioner - Appellant,</p> <p>v.</p> <p>ATTORNEY GENERAL OF THE STATE OF CALIFORNIA; et al.,</p> <p>Respondents - Appellees.</p>
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No. 08-15172

D.C. No. CV-06-01766-GGH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
James K. Singleton, District Judge, Presiding

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

California state prisoner Frank Aleo appeals pro se from the district court’s judgment dismissing without prejudice his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253, and we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Aleo contends that the district court erred by dismissing his petition for failure to exhaust because appellees waived the exhaustion requirement of 28 U.S.C. § 2254(b)(1)(A). This contention lacks merit because Aleo has made no showing that there was an express waiver. *See* 28 U.S.C. § 2254(b)(3) (“A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.”)

Aleo also failed to show that any state corrective process is unavailable or ineffective to protect his rights. *See* 28 U.S.C. § 2254(b)(1)(B).

**AFFIRMED.**